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REMARKS

In the non-final Office Action, the Examiner noted that claims 1-21 are pending in the application and that claims 1-21 stand rejected. By this response, Applicants have amended claims 1-2, 4, 6-10, 14-17, and 19-21. Claims 3, 5, 11-13, and 18 and have been cancelled without prejudice.

In view of both the amendments presented above and the following discussion, Applicants submit that none of the claims now pending in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §102 and 103.

It is to be understood that Applicants, by amending the claims, do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant responsive amendments.

REJECTIONS**A. 35 U.S.C. §102****Claims 1-10, 14 and 16-21**

The Examiner has rejected claims 1-10, 14 and 16-21 as being anticipated by Swildens et al. U.S. Patent No. 6,754,706 (hereinafter "Swildens"). In response, Applicants have amended claims 1-2, 4, 6-10, 14, 16-17, and 19-21 to more clearly recite aspects of the invention. Claims 3, 5, and 18, have been cancelled without prejudice.

Independent claim 1 (and similarly, independent claim 16), as amended, recites limitations not taught, shown, or suggested by Swildens.

Swildens teaches a scaleable domain name system with persistence and load balancing, in which a DNS server 105 determines the load and availability of content servers 107 and 108 using a table containing persistent entries (col. 4, lines 9-15).

However, Swildens does not disclose a method (claim 1) and a system (claim 16) for selecting a content server which use:

- grouping distance tuples using content server ID and classless inter-domain

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routing address (CIDR) prefix similarity to define grouping data values, a distance tuple comprising at least one of a network distance, a content server identifier, a time-stamp, and a client internet protocol (IP) address;

- storing data values at leaf nodes of a hierarchical tree structure having a root node representing CIDR space and a plurality of interior and leaf nodes, said data values including load information, network distances, and a number of tuples; and

- defining the client clusters by combining leaf nodes having sufficient similarity into parent nodes and identifying remaining leaf nodes as the client clusters,

as recited in claims 1 and 16.

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim" (Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). The Swildens reference fails to disclose each and every element of the claimed invention, as arranged in the claim.

As such, Applicants submit that independent claims 1 and 16 are not anticipated by Swildens and fully satisfy the requirements of 35 U.S.C. §102 and are patentable thereunder.

Furthermore, claims 2-10, 14 and 17, and 19-21 depend, either directly or indirectly, from claims 1 and 16 and recite additional features thereof. As such and at least for the same reasons as discussed above, Applicants submit that claims 2-10, 14 and 17, and 19-21 are also not anticipated by Swildens and fully satisfy the requirements of 35 U.S.C. §102 and are patentable thereunder.

Therefore, Applicants respectfully request the rejection be withdrawn.

B. 35 U.S.C. §103

Claims 11-13 and 15

The Examiner has rejected claims 11-13 and 15 under as being unpatentable over Swildens in view of Srinivasan et al. (U.S. Patent No. 6,237,061, hereinafter "Srinivasan"). In response, Applicants have amended claim 1, from which claim 15

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depends, and amended claim 15 to more clearly recite aspects of the invention. Claims 11-13 have been cancelled without prejudice.

Independent claim 1, as amended, recites limitations not taught, shown, or suggested by a combination of Swildens and Srinivasan. The patentability of claim 1 over Swildens has been discussed above in Section A.

Srinivasan teaches a method for prefix matching in a content addressable memory where CIDR addresses having different prefix lengths are stored in a single routing table and compared with an incoming destination address (col. 6, lines 27-30). In one embodiment, the CIDR address implementation is combined with a binary content addressable memory (CAM) to provide a hierarchical compare function with a CIDR address (col. 6, lines 39-42).

However, Srinivasan does not disclose a method for selecting a content server that uses (i) storing network distance tuples data values at leaf nodes of a hierarchical tree structure having a root node representing CIDR space and a plurality of interior and leaf nodes, said data values including load information, network distances, and a number of tuples; and (ii) combining leaf nodes having sufficient similarity into parent nodes and identifying remaining leaf nodes as the client clusters, as recited in claim 1. As such, Srinivasan does not teach Applicants' invention.

Moreover, Srinivasan cannot be utilized to modify the teachings of Swildens in a manner that would result in the method recited in claim 1. As such, Swildens and Srinivasan, alone or in a combination, would not produce Applicants' invention recited in claim 1.

The test under 35 U.S.C. § 103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Thus, it is impermissible to focus either on the "gist" or "core" of the invention, Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416, 420 (Fed. Cir. 1986) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6

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USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The combination of Swildens and Srinivasan fails to teach or suggest Applicants' invention as a whole.

As such, Applicants submit that independent claim 1 is not obvious in view of a combination of Swildens and Srinivasan and fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

Furthermore, claim 15 depends indirectly from claim 1 and recites additional features thereof. As such, and for at least the reasons discussed above, Applicants submit that claim 15 is also not obvious in view of a combination of Swildens and Srinivasan and fully satisfies the requirements of 35 U.S.C. § 103 and is patentable thereunder.

Therefore, Applicants respectfully request the rejection be withdrawn.

SECONDARY REFERENCES

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to Applicants' disclosure than the primary references cited in the Office Action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this office action.

CONCLUSION

Thus, Applicant submits that none of the claims presently in the application is anticipated or obvious under the respective provisions of 35 U.S.C. §102 and §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested

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that the Examiner telephone Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

7/21/05

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